

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3612 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

CHUDA KELAVNI MANDAL

Versus

STATE OF GUJARAT

Appearance:

MR MILAN S JOSHI for Petitioners
Mr. Sudhansu S. Patel, AGP for Respondents.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 21/09/2000

ORAL JUDGEMENT

The order dated 8th January 1992 passed by the
Section Officer, Education Department, in appeal
preferred by the petitioners, is under challenge in this
petition filed under Article 226 of the Constitution of
India.

2. The petitioners run the School at Chuda. It is
the Secondary School covered under the Direct Payment

Scheme. The grant has also been given to this school. Every year audit was being carried out. For the year 1989-90 the records of the school were audited and the report thereof was submitted on 21st January 1991. Meanwhile, the District Education Officer, Surendranagar, issued a notice bringing it to the notice of the petitioners that in Standard IX average number of presence of the students was not being maintained. Only 18 students were found attending the school though as per the minimum standard 23 students were required. The school authorities were then advised to take appropriate decision in that regard. Thereafter the petitioners on 12th December 1990 replied stating the circumstances under which during the particular year the average number of students required in Standard IX was not maintained. Pursuant to that on 21st December 1990 the District Education Officer informed the petitioners that the school was free to continue Standard IX despite the fact that the average number of the students was not maintained but the grant to the required extent would be cut of and the expenses in excess of the grant would have to be borne by the school authorities. Thereafter on 1st February 1991, the Education Officer sending a letter informed that relating to the year 1989-90 the expenses to the extent of Rs. 46,109.50 ps. were not approved & grant thereof could not be given. Feeling aggrieved by such intimation, the petitioners filed the application for necessary grant and withdrawal of the cut made in the grant. The Joint Director, Education, Gandhinagar, on 4th November 1991 turned down the application passing the order. Against that, the petitioners filed appeal before the Secretary, Department of Education, Gandhinagar. The appeal was not numbered and on 8th January 1992 the petitioners received the intimation Annexure 'G' qua their appeal having been rejected as it was not in accordance with the rules applicable. It is against that order the present petition is filed.

3. The learned advocate representing the petitioners submits that the appellate authority registering the appeal and giving reasonable opportunity to submit ought to have passed the order, but here in this case neither of the procedure has been undergone and the petitioner are condemned unheard. On such count the petition is required to be allowed and the appellate authority be directed to hear the appeal afresh affording reasonable opportunity.

4. It is the cardinal principle of law that the party who is likely to be affected by the order to be passed by the authority must be given reasonable

opportunity so submit his say. The authority has then to pass appropriate order. If reasonable opportunity is not given and order is passed, the order in law will be vitiated because no one can be condemned unheard. In the case on hand, there is nothing in the intimation, Annexure 'G' that opportunity to submit was given to the petitioner. The say of the petitioners is not refuted filing any affidavit. Further, as held by this Court in the case of B.R. Acharya Vs. State of Gujarat - 20 (2) [1997] G.L.R. 557, with regard to the administrative law even the duty of the appellate authority is to consider the grounds raised in the memo of appeal and pass the speaking order. If that is not done, the order must be struck down holding that there is no application of mind. In the case on hand, the appeal is rejected even without registering the same and giving opportunity to the petitioners as stated hereinabove. The appellate authority has also not passed any speaking order. Omission to pass the speaking order amounts to non-application of mind, as made clear by this Court in the above referred decision. Thus, on both the counts, the order passed vide Annexure 'G' on 8th January 1992 is required to be struck down and the matter is required to be referred back to the appellate authority for hearing and disposal in accordance with law.

5. For the aforesaid reasons, this petition is allowed. The order of the Section Officer, Education Department dated 8th January 1992 (Annexure 'G') is hereby quashed and set aside. The appellate authority in the Department of Education is hereby directed to register the appeal and dispose the same of in accordance with law passing a speaking order and giving opportunity to the petitioners to submit their say. Till the final disposal of the appeal, the authority shall not proceed to recover the amount as per Annexure 'D' dated 1st February 1991. Rule accordingly is made absolute.

rmr.